

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**AARON P. GARCIA, Personal
Representative of the Estate of
Catarina C. Garcia,**

Plaintiff(s),

vs.

CIVIL NO.02-104 MV/WDS

**WAL-MART STORES, INC.,
BESAM AUTOMATED ENTRANCE
SYSTEMS, INC., a/k/a BESAM
NORTHEAST, INC., CONTINENTAL
AUTOMATIC DOORS OF EL PASO, INC.,
and THE GLASS HOUSE, INC.,**

Defendant(s).

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendant Besam Automated Entrance Systems, Inc.'s Motion to Compel (Doc. 132). At a deposition of Plaintiff's expert, Donald Berman, testimony was elicited that he had previously been retained in sliding glass door cases and had performed sensitivity testing of sliding glass doors, an important issue in this case. Mr. Berman was unable to recall the specific cases or furnish any other information. Defendant's counsel indicated that he would send supplemental interrogatories and requests for production to obtain this information. On November 26, 2002, Defendant sent those interrogatories and requests to Plaintiff. No timely objections were made. Responses were served on June 9, 2003. The responses indicated that Mr. Berman could still not remember the cases in which he had done testing and that to search his case files, over 700, would be unduly burdensome.

Mr. Berman is Plaintiff's retained expert and he has testified that he has done testing in the past on sliding glass doors, the central issue in this case. It is entirely appropriate that Defendant be able to review any testing that was done in order to evaluate Mr. Berman's expertise and to otherwise prepare to cross examine him at trial. Plaintiff's argument that it would be unduly burdensome for him to review his past cases to find this information is without merit.

IT IS THEREFORE ORDERED that Defendant Besam Automated Entrance Systems, Inc.'s Motion to Compel (Doc. 132) is granted. Plaintiff shall answer Interrogatories Nos. 1 and 2 and shall produce the items requested in Request for Production Nos. 1 and 2.

A handwritten signature in black ink, appearing to read 'W. Daniel Schneider', is written over a horizontal line.

W. DANIEL SCHNEIDER
United States Magistrate Judge